

ST 02-0199-GIL 09/12/2002 CERTIFICATE OF REGISTRATION

The requirement that Form NUC-1, Illinois Business Registration, be signed by an individual who will be responsible for filing returns and payment of taxes due (Question 14) is set out at Section 2a of the Retailers' Occupation Tax Act. See 35 ILCS 120/2a. (This is a GIL).

September 12, 2002

Dear Mr. Xxxxx :

This letter is in response to your letter dated July 23, 2002 to our Central Registration Section. Your letter was referred to the Legal Services Office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

The company I work for which is headquartered in STATE has just hired a salesperson in the state of Illinois. We hope to engage clients in Illinois and sell our developed software products and services. As such, we are applying for the appropriate tax id numbers for Income Tax Withholding, Sales and Use Tax and any other required taxes.

Upon filling out the application we noticed in Section 2, question number 14 that an individual had to attest to the following statement: *'I accept personal responsibility for the filing of returns and the payment of taxes due.'* I interpret this as to mean that if the company, for any reason, fails to pay any taxes due that the state will require the individual to pay the taxes personally. I posed this question to PERSON in your Business Registration Department. She stated that the person is only responsible for guaranteeing the *processing* of the return and the payment. I asked if there was any office document supporting her interpretation. She said that I should write this letter and request an opinion from your legal department.

As such, I would like to formally request an opinion from your department clarifying the monetary liability, if any, assumed by the individual(s) signing in Section 2, number 14.

You have submitted questions and made inquiry regarding Question 14 of Form NUC-1, Illinois Business Registration. Question 14 of Form NUC-1 is based upon Section 2a of the Retailers' Occupation Tax Act, 35 ILCS 120/2a, which provides in part that "[t]he application shall contain an acceptance of responsibility signed by the person or persons who will be responsible for filing returns and payment of taxes due under this Act." The statutory language also requires the applicant to furnish the Department "the name and address of the person or persons who will be responsible for filing returns and payment of taxes due under this Act."

The language of Question 14 is not meant to expand the personal liability of corporate officers or employees who have the control, supervision, or responsibility for filing returns and making payment of taxes on behalf of the corporation. Rather, Question 14 must be read in conjunction with Section 3-7 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-7, which states the following:

"(a) Any officer or employee of any taxpayer subject to the provisions of a tax Act administered by the Department who has the control, supervision or responsibility of filing returns and making payment of the amount of any trust tax imposed in accordance with that Act and who wilfully fails to file the return or make the payment to the Department or wilfully attempts in any other manner to evade or defeat the tax shall be personally liable for a penalty equal to the total amount of tax unpaid by the taxpayer including interest and penalties thereon."

Question 14 only seeks to identify those persons who are responsible for filing returns and paying taxes. By signing Form NUC-1, these persons do not become personal guarantors of a corporation's tax liability under all circumstances. It is only if those persons are found to have wilfully failed to file returns or pay taxes that they can be held personally liable for amounts equal to the tax plus penalties and interest.

As the information requested by Question 14 is authorized and required by statute, the Department will not issue a Retailers' Occupation Tax (sales tax) Certificate of Registration until the information is provided.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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